

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3678 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BIKHA BUDHABHAI KAHAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

MR UR BHATT, AGP Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 09/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 16.3.1996 rendered by the first respondent under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act."

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the detenu has been carrying on criminal and anti-social activities of dealing in country liquor and also of assaulting the particular persons with deadly weapon/s and creating atmosphere of fear. The following offences have been registered against the petitioner in Pani Gate Police Station :

1. 485/95 Under Section 66(1)B, 65(E) of the Bombay Prohibition Act. 10 ltrs. of country liquor amounting to Rs.200/-. The matter is pending in the Court;
2. 565/95 Under Section 66(1)B, 65(E) of the Bombay Prohibition Act. 15 ltrs. of country liquor amounting to Rs.300/-. The matter is pending in the court;
3. 598/95 Under Section 66(1)B, 65(E) of the Bombay Prohibition act. 20 ltrs. of country liquor amounting to Rs.400/-. The matter is pending in the Court;
4. 16/96 Under Sections 307, 452, 114 of the Indian Penal Code read with Section 135 of the Bombay Police Act. The matter is pending in the Court.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of three witnesses have been relied upon. They indicate about three incidents, one occurring on 14th February 1996, second occurring on 6th February 1996 and the third occurring on 26th February 1996. All the three incidents indicate threatening administered to the concerned witnesses, their beating in the public place and rushing at the people collected at the place either with knife or with razer, as the case may be, leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the Detaining Authority has passed the impugned order of detention while also relying upon the aforesaid cases lodged against the petitioner. The petitioner has been stamped both, as a boot-legger as well as dangerous person within the meaning of Sections 2(b) and 2(c) of

the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to a conclusion that the same would affect public order. Reliance has been placed on the following decisions of the Apex Court :

1. Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta, C.P., reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in Paras : 11 & 12 of the citation and it has been submitted that facts of the present case run almost parellel to the facts before the Apex Court in Mustakmiya's case (Supra).
2. Rasidmiya @ Chhava Ahmedmiys Shaikh V/s. Police Commissioner, Ahmedabad, reported in A.I.R. 1989 Supreme Court 1703 is submitted to be a case more akin to the case in hand.

6. In Rashidmiya's case (Supra) the detenu there was also stamped as boot-legger as well as the dangerous person on the basis of the cases, 4 in number under the Bombay Prohibition Act and one under the Indian Penal Code (307, 120(B), 212 with Sections 3(1)(3) of the Terrorist Act, Section 4 & 5 of the Explosive Act, Sections 25(1)(A)(c) of the Arms Act and Section 135(1) of the Bombay Police Act. The Apex Court has observed that to bring the person within the definition of Section 2(b) of the PASA Act it must be shown that the person either by himself or as a member of or a leader of a gang habitually commits or attempts to commit or abets the commission of offences punishable under Chapter XVI or XVII or XXIII of the Indian Penal Code or any of the offences punishable under Chapter V of the Arms Act. It has also been observed that the general and vague allegations made in the grounds of detention that the detenu was taking active part in communicall riots and entered into conspiracy to spread an atmosphere of terror being a member of the gang of Abdul Latif Abdul Wahab Shaikh in the absence of any specific instance or

registration of any case thereof, cannot be construed as offences falling under any of the above three chapters of the IPC or Chapter V of the Arms Act enumerated under Section 2(c) of the PASA so as to characterise the detenu as a dangerous person. In the present case also there is one case referred to in so far as provision of I.P.C. are concerned. As before the Supreme Court here also obvious conclusion would be that the conclusions drawn by the detaining Authority about the detenu being a dangerous person would be bereft of sufficient material as required under Section 2(c) of the PASA Act. Referring to Section 6 of the PASA Act it was argued before the Apex Court that the grounds of detention were severable and as such the order of detention could not be said to be invalid or inoperative. The pointer was at the stamping of the detenu there as boot-legger. It was held that the order could be sustained provided there were material to show that the bootlegging activities of the detenu affected adversely or were likely to affect the maintenance of public order. It was held that the detaining authority must not only be satisfied that the person is a boot-legger within the meaning of Section 2(b) but also that the activities of the said boot-legger affect adversely or likely to affect adversely the maintenance of public order. The Apex court found that the activities of the detenu could not be said to be sufficient for holding that the same affect adversely or the same were likely to affect adversely the maintenance of public order.

7. In reply it has been submitted that in Rashidmiya's case there were four cases of prohibition and one case under Chapter CVI of the I.P.C. read with other provision of other Acts and the grounds of detention did not point out specific incidents. In the present case specific incidents have been quoted from the statements of the witnesses. In my opinion, the statement of witnesses do not indicate except that some individual persons were assaulted or beaten. They did not indicate that even the tempo of life was likely to be adversely affected or was in fact adversely affected. It is in this respect that a distinction has to be drawn between law and order and maintenance of public order. The Apex Court in Mustakmiya's case (Supra) said that the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines

whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order".

8. Mr.U.R.Bhatt, learned A.G.P. for the State has relied upon a decision in the case of Mrs.Harpreet Kaur Harvinder Singh Bedi V/s. State of Maharashtra & anr., reported in AIR 1992 SC 979. Comparing the fact of the present case to the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs.Harpreet Kaur's case (supra) would not be applicable.

9. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner - detenu Bhikha Budhabhai Kahar shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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